

AMENDED IN SENATE MARCH 27, 2008

AMENDED IN SENATE MARCH 13, 2008

SENATE BILL

No. 1137

Introduced by Senators Perata, Corbett, and Machado
(Coauthors: Senators Cedillo, Migden, Romero, and Wiggins)

January 31, 2008

An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Perata. Residential mortgage loans: foreclosure procedures.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made on or before December 31, 2007, that are for owner-occupied residences, this bill would, among other things, require, ~~prior to the filing of any notice of default,~~ a mortgagee, trustee, beneficiary, or authorized agent to *wait 30 days after contact is made with the borrower,* ~~or with or 30 days after satisfying due diligence attempt requirements to contact the borrower, as specified, to conduct a meeting before filing a notice of default.~~ *The bill would require contact with the borrower,*

as defined, *in order* to assess the borrower's financial situation, ~~provide the borrower with a list of HUD-certified housing counseling agencies in the borrower's geographic area, and explore options for the borrower to avoid foreclosure. The bill would preclude the filing of a notice of default until 30 days after that meeting or, if a meeting has not been arranged, 30 days after satisfying specified due diligence requirements, and would, upon that filing, require the mortgagee, trustee, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower a toll-free number for HUD-certified housing counseling agencies. As part of filing the notice of default, the bill would require the mortgagee, trustee, beneficiary, or authorized agent to include a specified declaration regarding the meeting contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require the mortgagee, trustee, beneficiary, or authorized agent, prior to the notice of sale, to contact the borrower, or with due diligence attempt to contact the borrower, as specified, to conduct a meeting between the above-described parties to assess the borrower's financial situation, provide the borrower with a list of HUD-certified housing counseling agencies in the borrower's geographic area, and explore options for the borrower to avoid foreclosure. Upon filing a notice of sale, the above-described declaration requirement would also apply as part of the notice of sale, to include a specified declaration regarding contact with the borrower.~~ The bill would authorize a borrower to designate a HUD-certified housing counseling agency to discuss with the mortgagee, trustee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property *or the borrower has contracted with an organization, as specified*. The bill would also require specified mailings to the resident of a property that is the subject of a notice of sale, *as specified*.

Until January 1, 2013, this bill would require a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill would authorize a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill would require a governmental entity that seeks to impose those fines and penalties to give notice of *the claimed*

violation and an opportunity to ~~abate~~ *remedy the violation* at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

(2) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit that has been sold due to foreclosure, 60 days to remove himself or herself from the property, as specified.

(3) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California is facing an unprecedented threat to its state
4 economy and local economies because of skyrocketing residential
5 property foreclosure rates in California. Residential property
6 foreclosures increased sevenfold from 2006 to 2007. In 2007, more
7 than 84,375 ~~homes~~ *properties* were lost to foreclosure in California,
8 and 254,824 ~~households~~ *loans* went into default, the first step in
9 the foreclosure process. ~~Furthermore, hundreds of thousands of~~
10 ~~residential property borrowers, including as many as 400,000~~
11 ~~subprime borrowers with mortgages valued at over one hundred~~
12 ~~billion dollars (\$100,000,000,000), could face foreclosure in the~~
13 ~~next five years.~~

14 (b) High foreclosure rates have adversely affected property
15 values in California, and will have greater adverse consequences
16 as foreclosure rates continue to rise. ~~A recent United States~~
17 ~~Congress Joint Economic Committee report estimates that more~~
18 ~~than twenty-three billion six hundred million dollars~~
19 ~~(\$23,600,000,000) in property values will be lost over the next~~
20 ~~two years in California because of foreclosures.~~

~~(e) The United States Conference of Mayors reports that, due to the housing crisis, California cities may see a decline in property, sales, and transfer taxes of nearly four billion dollars (\$4,000,000,000). More foreclosures means less money for schools, public safety, and other key services. In addition, Los Angeles could see an eight billion three hundred million dollars (\$8,300,000,000) decline in economic output in 2008. According to statistics released by the HOPE NOW Alliance, the number of completed California foreclosure sales in 2007 increased almost threefold from 1,902 in the first quarter to 5,574 in the fourth quarter of that year. Those same statistics report that 10,556 foreclosure sales, almost double the number for the prior quarter, were completed just in the month of January 2008. More foreclosures means less money for schools, public safety, and other key services.~~

~~(d)~~

(c) Under specified circumstances, mortgage lenders and servicers are authorized under their pooling and servicing agreements to modify mortgage loans when the modification maximizes the net present value of recoveries to the securitization trust and is in the best interest of investors. That modification is in the best interest of investors when the borrower's ability and willingness to pay under the modified terms continues to produce revenue for the investor, whereas a default on the loan and foreclosure of the property causing significant financial loss to the investor is likely to occur without a restructuring or other modification of the loan.

~~(e)~~

(d) It is essential to the economic health of California for the state to ameliorate the deleterious effects on the state economy and local economies and the California housing market that will result from the continued foreclosures of residential properties in unprecedented numbers by modifying the foreclosure process to require ~~responsible parties~~ mortgagees, trustees, beneficiaries, or authorized agents to contact borrowers and explore ~~mutually agreed upon~~ options that could avoid foreclosure. These changes in the procedure for accessing the state's foreclosure process are essential to ensure that the process does not exacerbate the current crisis by adding more foreclosures to the glut of foreclosed properties already on the market when a foreclosure could have been avoided.

1 Those additional foreclosures will further destabilize the housing
2 market with significant, corresponding deleterious effects on the
3 local and state economy.

4 ~~(f)~~

5 *(e)* According to a survey released by the Federal Home Loan
6 Mortgage Corporation (Freddie Mac) on January 31, 2008, 57
7 percent of the nation's late-paying borrowers do not know their
8 lenders may offer alternatives to help them avoid foreclosure.

9 ~~(g)~~

10 *(f)* As reflected in recent government and industry-led efforts
11 to help troubled borrowers, the mortgage foreclosure crisis impacts
12 borrowers not only in nontraditional loans, but also many borrowers
13 in conventional loans.

14 ~~(h)~~

15 *(g)* This act is necessary to avoid unnecessary foreclosures of
16 residential properties and thereby provide stability to California's
17 statewide and regional economies and housing market by requiring
18 early contact and communications between ~~responsible parties~~
19 *mortgagees, trustees, beneficiaries, or authorized agents* and
20 specified borrowers to ~~improve the long-term affordability of those~~
21 *loans explore options that could avoid foreclosure* and by
22 facilitating the modification or restructuring of loans ~~that would~~
23 *likely default otherwise in appropriate circumstances.*

24 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

25 2923.5. (a) (1) ~~Prior to the filing of a notice of default pursuant~~
26 ~~to Section 2924, a mortgagee, trustee, beneficiary, or authorized~~
27 ~~agent shall contact the borrower, or with due diligence attempt to~~
28 ~~contact the borrower pursuant to subdivision (g), in order to~~
29 ~~conduct a meeting with the borrower to assess the borrower's~~
30 ~~financial situation, provide the borrower with a list of~~
31 ~~HUD-certified housing counseling agencies in the borrower's~~
32 ~~geographic area, and explore options for the borrower to avoid~~
33 ~~foreclosure. Any meeting may occur telephonically.~~

34 ~~(2) The mortgagee, trustee, beneficiary, or authorized agent~~
35 ~~may not file a notice of default until 30 days after the meeting or,~~
36 ~~if a meeting has not been arranged, 30 days after satisfying the~~
37 ~~due diligence requirements as described in subdivision (g). The~~
38 ~~mortgagee, trustee, beneficiary, or authorized agent may file a~~
39 ~~notice of default if the borrower has canceled more than one~~
40 ~~meeting scheduled pursuant to this section. A mortgagee, trustee,~~

1 beneficiary, or authorized agent may not file a notice of default
2 pursuant to Section 2924 until 30 days after contact is made as
3 required by paragraph (2) or 30 days after satisfying the due
4 diligence requirements as described in subdivision (g).

5 (2) A mortgagee, trustee, beneficiary, or authorized agent shall
6 contact the borrower in person or by telephone in order to assess
7 the borrower's financial situation and explore options for the
8 borrower to avoid foreclosure. During the initial contact, the
9 mortgagee, trustee, beneficiary, or authorized agent shall advise
10 the borrower that he or she has the right to request a subsequent
11 meeting, which shall be scheduled to occur within 14 days. The
12 assessment of the borrower's financial situation and discussion
13 of options may occur during the first contact, or at the subsequent
14 meeting scheduled for that purpose. In either case, the borrower
15 shall be provided a toll-free telephone number for HUD-certified
16 housing counseling agencies. Any meeting may occur
17 telephonically.

18 (b) As part of the notice of default filed pursuant to Section
19 2924, the mortgagee, trustee, beneficiary, or authorized agent shall
20 include a declaration that it has ~~met with~~ contacted the borrower,
21 tried with due diligence to contact the borrower for a meeting as
22 required by this section, or the borrower has surrendered the
23 property to the mortgagee, trustee, beneficiary, or authorized agent.

24 (c) ~~(1) If a mortgagee, trustee, beneficiary, or authorized agent~~
25 ~~had already filed the notice of default prior to the enactment of~~
26 ~~this section and did not subsequently file a notice of rescission,~~
27 ~~then the mortgagee, trustee, beneficiary, or authorized agent shall,~~
28 ~~prior to filing a notice of sale pursuant to Section 2924f, contact~~
29 ~~the borrower, or with due diligence attempt to contact the borrower~~
30 ~~pursuant to subdivision (g), in order to conduct a meeting to assess~~
31 ~~the borrower's financial situation, provide the borrower with a list~~
32 ~~of HUD-certified housing counseling agencies in the borrower's~~
33 ~~geographic area, and explore options for the borrower to avoid~~
34 ~~foreclosure. Any meeting may occur telephonically.~~

35 (2) ~~Upon filing a notice of sale pursuant to Section 2924f, the~~
36 ~~mortgagee, trustee, beneficiary, or authorized agent described in~~
37 ~~paragraph (1) shall also comply with the declaration requirements~~
38 ~~of subdivision (b). as part of the notice of sale filed pursuant to~~
39 ~~Section 2924f, include a declaration that either:~~

1 (1) States that the borrower was contacted to assess the
2 borrower's financial situation and to explore options for the
3 borrower to avoid foreclosure.

4 (2) Lists the efforts made, if any, to contact the borrower in the
5 event no contact was made.

6 (d) A mortgagee's, trustee's, beneficiary's, or authorized agent's
7 loss mitigation personnel may participate by telephone ~~at any~~
8 ~~meeting~~ during any contact required by this section.

9 (e) For purposes of this section, a "borrower" shall include a
10 mortgagor or trustor.

11 (f) A borrower may designate a HUD-certified housing
12 counseling agency to discuss with the mortgagee, trustee,
13 beneficiary, or authorized agent, on the borrower's behalf, options
14 for the borrower to avoid foreclosure. That discussion satisfies the
15 ~~meeting requirements of this section~~ requirements of paragraph
16 (2) of subdivision (a). Any loan modification or workout plan
17 offered at the meeting by the mortgagee, trustee, beneficiary, or
18 authorized agent is subject to approval by the borrower.

19 (g) A mortgagee, trustee, beneficiary, or authorized agent who
20 has not contacted a borrower as required by paragraph (2) of
21 subdivision (a) may file a notice of default pursuant to Section
22 2924 if the failure to contact the borrower occurred despite the
23 due diligence of the mortgagee, trustee, beneficiary, or authorized
24 agent. For purposes of this section, "due diligence" shall require
25 and mean all of the following:

26 (1) A mortgagee, trustee, beneficiary, or authorized agent shall
27 first attempt to contact a borrower by sending a first-class letter
28 that includes the toll-free number for HUD-certified housing
29 counseling agencies.

30 (2) (A) After the letter has been sent, the mortgagee, trustee,
31 beneficiary, or authorized agent shall attempt to contact the
32 borrower by telephone at least three times at different hours and
33 on different days, including one call on a weekend. Telephone
34 calls shall be made to the primary telephone number on file. ~~The~~
35 ~~requirements of this subparagraph are not applicable if a meeting~~
36 ~~that satisfies subdivision (a) or (c) has been arranged.~~

37 (B) A mortgagee, trustee, beneficiary, or authorized agent may
38 attempt to contact a borrower using an automated system to dial
39 borrowers, provided that, if the telephone call is answered, the call

1 is connected to a live representative of the mortgagee, trustee,
2 beneficiary, or authorized agent.

3 (3) If the borrower does not respond within two weeks after the
4 ~~last communication by the mortgagee, trustee, beneficiary, or~~
5 ~~authorized agent, and the first-class letter and telephone call~~
6 ~~requirements of paragraph (2) have been satisfied, the mortgagee,~~
7 ~~trustee, beneficiary, or authorized agent shall then send a certified~~
8 ~~letter, with return receipt requested. This requirement is not~~
9 ~~applicable if a meeting that satisfies subdivision (a) or (c) has been~~
10 ~~arranged.~~

11 (4) The mortgagee, trustee, beneficiary, or authorized agent
12 shall provide a means for the borrower to contact it in a timely
13 manner, including a toll-free telephone number that will provide
14 access to a live representative during business hours.

15 (5) The mortgagee, trustee, beneficiary, or authorized agent has
16 posted a prominent link on the homepage of its Internet Web site
17 ~~to its Web page, or pages, that contain, if any, to the following~~
18 ~~information:~~

19 (A) Options that may be available to borrowers who are unable
20 to afford their mortgage payments and who wish to avoid
21 foreclosure, and instructions to borrowers advising them on steps
22 to take to explore those options.

23 (B) A list of financial documents borrowers should collect and
24 be prepared to present to the mortgagee, trustee, beneficiary, or
25 authorized agent when discussing options for avoiding foreclosure.

26 (C) A toll-free telephone number for borrowers who wish to
27 discuss options for avoiding foreclosure with their mortgagee,
28 trustee, beneficiary, or authorized agent.

29 (D) *A toll-free number for HUD-certified housing counseling*
30 *agencies.*

31 (h) Subdivisions (a), (c), and (g) shall not apply if ~~a~~ *either of*
32 *the following occurs:*

33 (1) A borrower has surrendered the property as evidenced by
34 either a letter confirming the surrender or delivery of the keys to
35 the property to the mortgagee, trustee, beneficiary, or authorized
36 ~~agent accompanied by other indicia of the borrower's intent to~~
37 ~~surrender the property.~~ *agent.*

38 (2) *The borrower has contracted with an organization, person,*
39 *or entity whose primary business is advising people how to extend*

1 *the foreclosure process and avoid their contractual obligations to*
2 *mortgagees, trustees, beneficiaries, or authorized agents.*

3 (i) This section shall only apply to loans secured by residential
4 real property made on or before December 31, 2007, that are for
5 owner-occupied residences.

6 (j) This section shall remain in effect only until January 1, 2013,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2013, deletes or extends that date.

9 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

10 2923.6. (a) The Legislature finds and declares that any duty
11 servicers may have to maximize net present value under their
12 pooling and servicing agreements is owed to all parties in a loan
13 pool, not to any particular parties, and that a servicer acts in the
14 best interests of all parties if it agrees to or implements a loan
15 modification or workout plan for which both of the following
16 apply:

17 (1) The loan is in payment default, or payment default is
18 reasonably foreseeable.

19 (2) Anticipated recovery under the loan modification or workout
20 plan exceeds the anticipated recovery through foreclosure on a net
21 present value basis.

22 (b) It is the intent of the Legislature that ~~at any meeting held~~
23 ~~pursuant to subdivisions (a) or (c) of Section 2923.5, the~~ *the*
24 *mortgagee, trustee, beneficiary, or authorized agent offer the*
25 *borrower* a loan modification or workout plan if such a
26 modification or plan is consistent with its *contractual or other*
27 authority to mitigate losses.

28 (c) This section shall remain in effect only until January 1, 2013,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2013, deletes or extends that date.

31 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

32 2924.8. (a) Upon ~~filing~~ *posting* a notice of sale pursuant to
33 Section 2924f, a mortgagee, trustee, beneficiary, or authorized
34 agent shall also mail, at the same time, an envelope addressed to
35 the “resident” of the property containing the following notice in
36 English and the languages described in Section 1632: “Foreclosure
37 process has begun on this property, which may affect your right
38 to continue to live in this property. Twenty days or more after the
39 date of this notice, this property may be sold at foreclosure. ~~The~~
40 *If you are renting this property, the new property owner may either*

1 give you a new lease or provide you with a 60-day eviction notice.
2 However, other laws may prohibit an eviction in this circumstance
3 or provide you with a longer notice before eviction. You may wish
4 to contact a lawyer or your local legal aid or housing counseling
5 agency to discuss any rights you may have.”

6 (b) The outside of the envelope shall prominently state in
7 English and the languages described in Section 1632:
8 “IMPORTANT: Information contained in this letter may affect
9 your right to live in this property.”

10 (c) This section shall only apply to loans secured by residential
11 real property, *and if the billing address for the mortgage note is*
12 *different than the property address.*

13 (d) This section shall remain in effect only until January 1, 2013,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2013, deletes or extends that date.

16 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

17 2929.3. (a) A legal owner shall maintain vacant residential
18 property purchased by that owner at a foreclosure sale, or acquired
19 by that owner through foreclosure under a mortgage or deed of
20 trust. A governmental entity may impose civil fines and penalties
21 for failure to maintain the property of up to one thousand dollars
22 (\$1,000) per day for a violation. If the governmental entity chooses
23 to impose fines and penalties pursuant to this section, it shall give
24 notice of ~~violation and opportunity to abate~~ *the claimed violation,*
25 *including a description of the conditions giving rise to the claim*
26 *of violation, and an opportunity to remedy the violation* at least
27 14 days prior to imposing those fines and penalties and allow for
28 a hearing and opportunity to contest any fines and penalties
29 imposed.

30 (b) For purposes of this section, “failure to maintain” includes
31 failure to adequately care for the property, including, but not
32 limited to, permitting excessive foliage growth that diminishes the
33 value of surrounding properties, failing to take action to prevent
34 trespassers or squatters from remaining on the property, or failing
35 to take action to prevent mosquito larva from growing in standing
36 water.

37 (c) Fines and penalties collected pursuant to this section shall
38 be directed to local nuisance abatement programs.

39 (d) These provisions shall not preempt any local ordinance.

40 (e) This section shall only apply to residential real property.

1 (f) The rights and remedies provided in this section are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

4 (g) This section shall remain in effect only until January 1, 2013,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2013, deletes or extends that date.

7 SEC. 6. Section 1161b is added to the Code of Civil Procedure,
8 to read:

9 1161b. (a) Notwithstanding Section 1161a, a tenant or
10 subtenant in possession of a rental housing unit that has been sold
11 due to foreclosure shall be given 60 days' written notice to quit
12 pursuant to Section 1162 before the tenant or subtenant may be
13 removed from the property as prescribed in this chapter.

14 (b) *This section shall not apply if any party to the note remains*
15 *in the property as a tenant, subtenant, or occupant.*

16 ~~(b)~~

17 (c) This section shall remain in effect only until January 1, 2013,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2013, deletes or extends that date.

20 SEC. 7. Nothing in this act is intended to affect any local
21 just-cause eviction ordinance. This act does not, and shall not be
22 construed to, affect the authority of a public entity that otherwise
23 exists to regulate or monitor the basis for eviction.

24 SEC. 8. The provisions of this act are severable. If any
25 provision of this act or its application is held invalid, that invalidity
26 shall not affect other provisions or applications that can be given
27 effect without the invalid provision or application.

28 SEC. 9. (a) This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or safety within
30 the meaning of Article IV of the Constitution and shall go into
31 immediate effect. The facts constituting the necessity are:

32 In order to stabilize and protect the state and local economies
33 and housing market at the earliest possible time, it is necessary for
34 this act to take effect immediately.

35 (b) *However, the provisions of Section 4 of this act, which adds*
36 *Section 2924.8 to the Civil Code, shall become operative 60 days*
37 *after the effective date of this act.*